

DEPOSITIONS UPON ORAL EXAMINATION

30.01: *Limitations on Depositions.* A deposition taken pursuant to Fed R. Civ. P. 30(b)(6) shall be considered as one deposition regardless of the number of witnesses presented to address the matters set forth in the notice.

30.02: *Objections to Telephone Depositions.* A party who objects to a telephonic deposition shall make the objections known at least ten (10) days prior to the taking of the deposition. If the objection is not resolved by the parties or the Court before the scheduled deposition date, the deposition shall be stayed pending resolution of the dispute. *See also* Fed. R. Civ. P. 30(b)(7).

30.03: *Video Depositions.* By indicating in its notice of a deposition that it wishes to record the deposition by videotape (and identifying the proposed videotape operator), a party shall be deemed to have moved for such an order under Fed. R. Civ. P. 30(b)(4). Unless an objection is filed and served within ten (10) days after such notice is received, the Court shall be deemed to have granted the motion pursuant to the following terms and conditions:

- (A) *Stenographic Recording.* The videotaped deposition shall be simultaneously recorded stenographically by a qualified court reporter. The court reporter shall on camera administer the oath or affirmation to the deponents. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of Fed. R. Civ. P. 30(e) (submission to witness) and 30(f) (filing; exhibits).
- (B) *Cost.* The noticing party shall bear the expense of both the videotaping and the stenographic recording. Any party may at its own expense obtain a copy of the videotape and the stenographic transcript. Requests for taxation of these costs and expenses may be made at the conclusion of the litigation in accordance with applicable law.
- (C) *Video Operator.* The operator(s) of the videotape recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately.
- (D) *Attendance.* Each witness, attorney, and other person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, only the deponent (and demonstrative materials used during the deposition) will be videotaped. Identification on camera of each witness, attorney, and other person attending the deposition may be waived by the attorneys for the parties.
- (E) *Standards.* The deposition will be conducted in a manner to replicate, to the

extent feasible, the presentation of evidence at a trial. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting and field of view will be changed only as necessary to accurately record the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to satisfactorily record the voices of counsel and the deponent. Eating and smoking by deponents or counsel during the deposition will not be permitted.

- (F) *Interruptions.* Videotape recording will be suspended during all “off the record” discussions.
- (G) *Index.* The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends, at which objections are made and examination resumes, at which exhibits are identified, and at which any interruption of continuous tape recording occurs, whether for recesses, “off the record” discussions, mechanical failure or otherwise.
- (H) *Filing.* The original of the tape recording, together with the operator’s log index and a certificate of the operator attesting to the accuracy of the tape, shall be filed with the Clerk of Court. No part of a videotaped deposition shall be released or made available to any member of the public unless authorized by the Court.
- (I) *Objections.* Requests for pretrial rulings on the admissibility of evidence obtained during a videotaped deposition shall be accompanied by appropriate pages of the written transcript. If the objection involves matters peculiar to the videotaping, a copy of the videotape and equipment for viewing the tape shall also be provided to the Court.
- (J) *Use at Trial; Purged Tapes.* A party desiring to offer a videotape deposition at trial shall be responsible for having available appropriate playback equipment and a trained operator. An edited copy of the tape, purged of unnecessary portions (and any portions to which objections have been sustained), must be prepared by the offering party to facilitate continuous playback. A copy of the edited tape shall be made available to other parties at least two (2) days before it is used, and the unedited original of the tape shall also be available at the trial.

30.04: *Conduct During Depositions*.¹⁴

- (A) At the beginning of each deposition, deposing counsel shall instruct the witness to ask deposing counsel, rather than the witness's own counsel, for clarifications, definitions, or explanations of any words, questions, or documents presented during the course of the deposition. The witness shall abide by these instructions.
- (B) All objections, except those which would be waived if not made at the deposition under Fed. R. Civ. P. 32(d)(3), and those necessary to assert a privilege, to enforce a limitation directed by the Court, or to present a motion pursuant to Fed. R. Civ. P. 30(d), shall be preserved.
- (C) Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege¹⁵ or a limitation on evidence directed by the Court or unless that counsel intends to present a motion under Fed. R. Civ. P. 30(d)(1). In addition, counsel shall have an affirmative duty to inform their clients that unless such an objection is made, the question must be answered. Counsel directing that a witness not answer a question on those grounds or allowing their clients to refuse to answer a question on those grounds shall move the Court for a protective order under Local Civil Rule 26(c) or 30(d)(3) within five (5) business days of the suspension or termination of the deposition. Failure to timely file such a motion will constitute waiver of the objection, and the deposition may be reconvened.
- (D) Counsel shall not make objections or statements which might suggest an answer to a witness. Counsel's objections shall be stated concisely and in a non-argumentative and non-suggestive manner, stating the basis of the objection and nothing more.
- (E) Counsel and witnesses shall not engage in private, "off the record" conferences during depositions or during breaks or recesses regarding the substance of the testimony at the deposition, except for the purpose of deciding whether to assert a privilege or to make an objection or to move for a protective order.
- (F) Any conferences which occur pursuant to, or in violation of, Local Civil Rule

¹⁴ The restrictions and requirements in this Local Civil Rule relating to counsel are applicable to any person who is conducting or defending a deposition, including a *pro se* litigant. Participants are also subject to similar restrictions applicable to "any person" under Fed. R. Civ. P. 30.

¹⁵ For purposes of this Local Civil Rule, the term "privilege" includes, but is not limited to, attorney-client privilege, work product protection, trade secret protection, and privileges based on the Fifth Amendment to the United States Constitution.

30.04(E) are proper subjects for inquiry by deposing counsel to ascertain whether there has been any witness coaching and, if so, to what extent and nature.

- (G) Any conferences which occur pursuant to, or in violation of, guideline Local Civil Rule 30.04(E) shall be noted on the record by the counsel who participated in the conference. The purpose and outcome of the conference shall be noted on the record.
- (H) Deposing counsel shall provide to opposing counsel a copy of all documents to be shown to the witness during the deposition, either before the deposition begins or contemporaneously with the showing of each document to the witness. If the documents are provided (or otherwise identified) at least three (3) business days before the deposition, then the witness and the witness's counsel do not have the right to discuss the documents privately during the deposition. If the documents have not been so provided or identified, then counsel and the witness may have a reasonable amount of time to discuss the documents before the witness answers questions concerning the document.
- (I) If an objecting party or deponent demands, after good faith consultation pursuant to Local Civil Rule 7.02, that the deposition be suspended pursuant to Fed. R. Civ. P. 30(d), the assigned judge's office shall be contacted to allow that judge to resolve the matter telephonically, if possible. If the assigned judge is not available, that judge's standing instructions for resolution of such matters, which may include referral to a magistrate or another judge, shall be followed. These instructions shall be available from the judge's chambers and the docketing clerk.
- (J) Violation of this Local Civil Rule shall be deemed to be a violation of a court order and shall subject the violator to sanctions under Fed. R. Civ. P. 37(b)(2).